

## **Remarks**

Claims 21–25 and 31–86 are pending in this application. Claims 21 and 42 have been amended to make editorial changes. New claims 66–86 have been added to more specifically claim the invention. The new and amended claims are fully supported by the specification. No new matter has been added.

### **Section 112 Rejection**

Applicants have amended claim 21 to clarify the claims and address the examiner's section 112, second paragraph rejection. Claim 21 and its dependents should no longer be subject to this rejection.

### **Reinstating Claims 32–65**

Applicants reinstate claims 32–65, which were previously withdrawn.

In the September 11, 2007 final office action, the examiner restricted the claims into two groups: claims 21–25 and 31 were in group I, and claims 32–65 were in group II. The examiner elected on behalf of the applicants—unilaterally and without first seeking the applicants' election or approval—the claims in group I.

With the amendment to claim 21, the claims in groups I and II are no longer independent and distinct for the reasons previously given. Therefore, applicants reinstate claims 32–65.

### **Section 102 and 103 Rejections**

Claims 21–24 were rejected under section 102(b) as being anticipated by, or in the alternative, under section 103(a) as being unpatentable over U.S. patent 4,763,536 (Beshoory). Claim 25 was rejected under section 103(a) as being unpatentable over Beshoory. Claim 31 was rejected under section 103(a) as being unpatentable over Beshoory and further in view of U.S. patent 3,373,598 (Johnson).

Reconsideration of the rejections and allowance of the claims is respectfully requested.

### **Claim 21**

Applicants continue to strongly believe claims 21 and its dependents are allowable over the prior art for the reasons discussed on page 9 of the applicants' June 27, 2007 response and on

pages 2–3 in the applicants’ February 11, 2008 pre-appeal brief review request. The prior art does not have the features and benefits of the invention.

Claim 21 should be allowable for at least the following reasons:

***Apertures 33 Are Required in Beshoory***

At page 4 of the office action, the examiner states that “while Beshoory discloses additional openings in the tube (apertures 33), they are *needed only for flowing a purging gas through the tube*” (emphasis added).

The examiner has wholly mischaracterized the prior art reference. Apertures 33 are *required* so that sample beam 71 can extend through an aperture 33. If aperture 33 is omitted then it would not be possible for the sample beam to extend into tube 40 and the entire purpose of Beshoory would be ruined.

Perhaps a magician can pass a solid beam through a solid material without using an opening. But that would be a magic trick—a mere optical illusion—having no basis in reality.

Without the sample beam, Beshoory’s apparatus would not function as intended. Then, there would be no purpose to input a reaction gas, and fluid inlet 43 and outlet 44 would no longer be needed. The examiner chooses—apparently by using impermissible hindsight—to remove aperture 33. Using the same logic, inlet 43 and outlet 44 can also be removed. No sample beam, no inlet or outlet too.

For at least this additional reason, claim 21 should be allowable. Claims 22–25, 31, and 76–86 are dependent on claim 21 and should be allowable for at least similar reasons. These dependent claims recite additional limitations which further distinguish the invention over the prior art.

## **Conclusion**

For the above reasons, applicants believe all claims now pending in this application are in condition for allowance. Applicants respectfully request that a timely Notice of Allowance be issued in this case. If the examiner believes a telephone conference would expedite prosecution of this application, please contact the signee.

Respectfully submitted,

Aka Chan LLP

/Melvin D. Chan/

Melvin D. Chan  
Reg. No. 39,626

Aka Chan LLP  
900 Lafayette Street, Suite 710  
Santa Clara, CA 95050  
Tel: (408) 701-0035  
Fax: (408) 608-1599  
E-mail: [mcl@akachanlaw.com](mailto:mcl@akachanlaw.com)